

ENFORCING SUSTAINABILITY

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1. INTRODUCTION

The aims and objectives of improving sustainability and the thermal efficiency of buildings is very laudable, and today, responsible persons accept the need to address the issues of climate change. One of those issues is the way we create, use and then discard our buildings. There is a need to regulate to achieve the aims. If you regulate you have to be able to enforce those regulations. Advice on regulatory requirements is a business, incorporating enforcement into that business envelope is difficult and leaves questions as to the practicality of implementation and enforcement.

2. BUILDING CONTROL IS A BUSINESS

Building control and enforcement in today's world are becoming separated and it is perhaps time to consider a divorce of the two concepts.

Building control today is a business and you don't encourage customers to use that business, by threatening them with prosecutions if they don't do as they are told. There can be few instances of business where a great deal of time and effort is expended on attracting custom, then having secured the business telling the customer that they can't do it that way, or giving them notice to take down or remove something that is not considered to be correct.

The building control service is one offering advice and guidance on compliance with the law. Ultimately local authority building control is the only body that can take the final step of prosecution for failing to comply with the law as contained within Building Regulations.

The laws of enforcement in relation to Building Regulations has changed little since their introduction in 1966, and before that in the Public Health Act 1936, under which the original regulations were first introduced. From that time up to 1980, Building Regulations were something that the developer had to comply with, and 'the man from the council' came round to make sure that you had done so. With the introduction of charges for the service then competition from the private sector, the developer started to look for some value in the service that he was paying for. It became clear that he was not prepared to pay for just being told – "wrong do it again". He expected some advice on why it was wrong and what could be done to make it right, more importantly he wanted to know at an early stage, so that a solution could be found without wasting time and money on going in the wrong direction.

3. BUILDING CONTROL AS PART OF THE TEAM

Today Building Control should be regarded as part of the design and construction team, and 'Control' is perhaps not the best way to describe the input that is offered. The regulations have to be respected and adhered to, but in order to achieve that, the Building control professional, is there to advise on what the regulations require, and where possible offer potential solutions to a problem

that might arise. By having that input throughout the design and construction phase of a project, compliance with the law is achieved, not by enforcement but by cooperation. Is this not similar to the accepted input from the Health and Safety Executive or the Environmental health officer, all are there to offer help and advice in order to achieve compliance with the law, but ultimately all can prosecute for failure to comply.

4. POWERS OF ENFORCEMENT

If it is necessary for the building control officer to consider enforcement by resort to prosecutions, it has long been lamented that the powers contained within the Building Act, are not adequate for the purpose, particularly when they in turn are affected by the Local Government Miscellaneous Provisions Act. This has in part been recognised by the legislators and for recent changes to Part L – Conservation of fuel and power, the time to execute such prosecutions has been extended.

This is all very well on new build and projects that follow the accepted route with regards to Building Regulation requirements but what of the sustainable issues that are being introduced by way of encouragement to build greener homes and eco friendly buildings, those parts of the Code for Sustainable homes for instance, that are above minimum legal requirements.

5. SUSTAINABLE BUILDING

The Code for Sustainable Homes is to be the key element in the future sustainability aspects of design and construction of new homes. Future building Regulations will be formulated around its concept. Building Regulations are however minimum standards that have to be met, the code goes beyond those minimum standards and beyond the levels of enforcement by prosecution, which can only be aimed at the base line requirements.

Initially, from April 2007 it is hope to encourage developers to have their homes assessed against the code, on a voluntary basis, from April 2008 a mandatory rating will be required. Mandatory to have the home assessed, but not mandatory to achieve any particular level above the minimum. So there will be 'enforcement' of the need to have an assessment, but enforcement of standards remains only those minimum necessary to satisfy Building Regulations. The Regulations will of course change and improve and by 2016 the aim is to have regulations that satisfy code level 6 – zero carbon.

6. CONSUMER CONTROL

Is prosecution the only method of enforcement? It can be argued that requirements of Building Regulations and sustainable issues in particular, are being enforced more and more by the consumer. Mortgage Lenders often require a Full Plans approval notice before sanctioning loans for individual building projects, and if it is a local authority or social landlord project, sustainable issues above the minimum requirements of Building Regulations, become conditional upon financial borrowing and grant aid. Purchasers are becoming ever more reluctant to exchange contracts unless a Building Regulation completion certificate has been issued.

Approach to compliance with Building Regulations is changing from one of adequate specification and visual site inspection, to one of proving the product. Quite rightly consumers require evidence that their purchase lives up to the claims of the specification, and we have seen the introduction of sound testing for certain walls and floors and pressure testing of buildings. Energy performance certificates are upon us for all dwellings old and new and assessments against the Code for Sustainable Homes are the next step. Failure to meet the standards at this stage will not only constitute a failure to meet building regulations but can cost the developer a property sale, so addressing any problems may well be driven by the consumer and the roll of Building Control becomes one of verifier of information.

7. PRACTICAL ISSUES.

There are many practical issues to be addressed when verifying the finished product for compliance.

Building Regulations can and do require several types of notifications to be given about the product, all should be in place before that completion certificate is issued, and failure to provide that information at least in theory starts the enforcement ball rolling.

But while the regulations require notification, not all the notifications are required to be given to Building Control, in some cases, it is given direct to the consumer.

New regulation 16 requires fire safety information to be given to the responsible person as defined in the Regulatory Reform (Fire Safety) Order 2005 – if that information is not forthcoming, it becomes a Building Regulation enforcement issue – but there is no direct requirement to inform Building Control that the information has been provided, or any mechanism to determine that the information was adequate and correct. Once occupied enforcement becomes the responsibility of the Fire and Rescue Authority, but the stages in between may cause confusion.

Sound testing results and energy efficiency ratings are embedded in the Building Regulations and it is a requirement to notify Building Control of the results. Notice of commissioning of heating and hot water systems also must be given to Building Control. But what of the requirement to provide information on operation and maintenance of fixed building services, who is to decide that they have been provided and that they are adequate and sufficient for purpose? – Building Control needs a mechanism to ensure this criterion has been satisfied before completing the project.

8. ENFORCEMENT BEYOND MINIMUM STANDARDS

How do you enforce beyond minimum standards? Well, clearly enforcement is the wrong term and perhaps encouragement would be more appropriate. As indicated earlier, Building Control is expected to enforce to minimum standards, the legal tools to do this might best be described as minimal also. However, compliance is achieved through a combination of cooperation, market forces and as a last resort prosecution.

When we strive to achieve levels above the minimum standard, there has to be an alternative incentive to that of prosecution. Also there has to be a mechanism to ensure levels have been achieved.

There will be minimum standards for

- Energy efficiency
- Water efficiency
- Surface water management
- Site Waste management
- Household waste
- Use of materials

Apart from site waste and Use of materials such as low allergy materials, the others are either measurable or can be calculated and the results recorded with relative ease. However for these

two categories it is perhaps not quite so simple to 'police', who and how are we to ensure that the records for site management are accurate. Use of materials may be slightly easier to 'police' but here again material combinations may prove a challenge to 'the enforcer'

When we come to the 'optional extras'

- Lifetime homes
- Daylight
- Additional sound insulation
- Private external space
- Security
- User guides

These will not be enforced within the context of the minimum standards at least not until 2016 which is the goal for zero carbon development. Here we will have to rely on either the money lender or the consumer to demand higher standards. The consumer needs to be educated, advised and otherwise persuaded to demand those higher standards if we are to achieve the goal of high sustainability.

9. CONCLUSION

The Building Control business and the enforcement of Building Regulations, do not make for a happy partnership. As Building Control becomes part of the development team, there is a need to differentiate between the two.

The tools of enforcement have not kept pace with changes to regulatory requirements, and to enforce sustainability, these tools will need to be revised.

The consumer or end user of the building must be educated to demand higher standards if we are to progress beyond providing buildings that meet only the minimum regulatory standards.

Practical issues of ensuring the right information is given to the right person at the right time will prove a challenge to the enforcer of the requirements.

The Code for Sustainable Homes provides a goal for everyone to achieve. It is generally agreed that we have to meet those standards if we are to protect the environment. Wherever possible, people should be encouraged to meet those targets not enforced to do so.
